
OFFICE OF THE ATTORNEY GENERAL
Official Opinion No. 2018-3

March 16, 2018

OFFICIAL OPINION NO. 2018-3

The Honorable Eddie Melton
The Honorable Lonnie Randolph
Indiana State Senate

The Honorable Charlie Brown
The Honorable Earl Harris, Jr.
The Honorable Vernon Smith
Indiana House of Representatives

200 W. Washington Street
Indianapolis, IN 46204

RE: Authority to Fill Vacancy on Board of School Trustees of the Gary Community School Corporation and Appoint President

Dear Senators Melton and Randolph, and Representatives Brown, Harris, and Smith:

The Office of the Attorney General (OAG) received your request for an official opinion. In your letter, you raised the following issue:

Is the Emergency Manager authorized to fill a vacancy on the Board of School Trustees for the Gary Community School Corporation and appoint who shall serve as president of said Board?

BRIEF ANSWER

The Emergency Manager does not have the statutory authority to fill a vacancy on the Board of School Trustees of the Gary Community School Corporation or appoint the president of said Board.

ANALYSIS

The Gary Community School Corporation ("GCSC") is heavily in debt. It is a "distressed political subdivision" under Ind. Code § 6-1.1-20.3-2. See *also* Ind. Code § 6-1.1-20.3-6.5. The legislature, through P.L. 241-2017, granted authority to the Distressed Unit Appeal Board (DUAB) to place GCSC under a fiscal management board. See Ind. Code § 6-1.1-20.3 *et seq.* DUAB has appointed several specialists, including an "emergency manager."¹

The legislature made specific findings regarding GCSC at Ind. Code § 6-1.1-20.3-6.8. The code provision states that "the governing body of the school corporation may not meet more often than once each month." Ind. Code § 6-1.1-20.3-6.8(d). The "governing body" of GCSC is the Board of School Trustees. Ind. Code § 20-23-12-3.

While GCSC is a "distressed political subdivision," the Emergency Manager has considerable authority "related to financial and academic matters of the school corporation," and can act without approval of the governing body. Ind. Code § 6-1.1-20.3-6.8(e)(2). The Emergency Manager is obliged to "consult with and consider recommendations from. . .the governing body," but the Emergency Manager is not obligated to follow such recommendations. Ind. Code § 6-1.1-20.3-6.8(e)(2). The governing body does have the authority to appoint a member of the "fiscal management board" but no member of the governing body may serve on this board. Ind. Code §§ 6-1.1-20.3-6.8(g)(1), (h)(3).

A vacancy has occurred on the Board of School Trustees (hereafter, the Board). The Emergency Manager reportedly intends to fill the vacancy and appoint the president of the Board. The Board is organized under Ind. Code § 20-23-12 *et seq.* There is a specific statutory provision addressing vacancies on the school board (emphasis added):

IC 20-23-12-10 Vacancies

Sec. 10. (a) A vacancy on the governing body is created when:

(1) a member:

(A) dies;

(B) resigns from the governing body;

(C) ceases to be a resident of the school corporation;

(D) fails to attend, except for reason of chronic illness, six (6) regularly scheduled meetings of the governing body in any twelve (12) month period; or

(E) ceases to be a resident of the school district in which the member was elected; or

(2) a vacancy is created under any other law.

(b) ***The governing body shall temporarily fill a vacancy on the governing body as soon as practicable after the vacancy occurs.***

In addition, the school corporation is a "community school corporation" organized under the provisions of Ind. Code § 20-23-4 *et seq.* For a "community school corporation," a vacancy on the school board is filled by the governing body itself; however, should the governing body be unable to do so or fail to act within thirty (30) days after the vacancy occurs, "the judge of the circuit court in the county where the majority of registered voters of the school corporation reside shall make the appointment." Ind. Code § 20-23-4-30(c). With respect to the GCSC Board, should it fail to act within the delineated time frame or be able to do so due to a tie vote, the Lake County Circuit Court would then make the appointment.

With respect to officers, the seven-member Board has a president, vice president, and secretary.² As a "community school corporation," these officer positions are authorized. See Ind. Code § 20-23-4-26(d). The Board is an elected one. Ind. Code § 20-23-12-3. The Board's executive structure, as noted, consists of a president, vice president, and secretary. The Board appoints its treasurer, in accordance with Ind. Code § 20-26-4-1(c). Under Ind. Code § 20-26-4-1(b), it is the governing body that organizes itself by "electing" its officers, including its president. The Board in the instant matter follows this procedure and has promulgated a policy to this effect, initially adopted on April 19, 1994, and re-adopted on December 23, 2016.³

Although P.L. 241-2017 granted considerable authority to the Emergency Manager, including with regard to the Emergency Manager's relationship with the Board, the legislature did not confer upon the Emergency Manager the authority either to fill a vacancy on the Board or to appoint a Board member as president (or any other officer). There has been no change in the legislation that authorizes the Board to fill its own vacancies, authorizes the Lake County Circuit Court to do so should the Board fail or be unable to do so, or for the Board to elect its own officers.

While Ind. Code § 6-1.1-20.3 *et seq.*, as amended by P.L. 241-2017, has a number of provisions that relate to GCSC and its Board, none of the provisions authorizes the Emergency Manager to fill vacancies on the Board or determine its officers. This is specifically reserved to the Board itself under existing—and unaffected—statutory provisions.

"There is a strong presumption that the legislature in enacting a particular piece of legislation is aware of existing statutes on the same subject." *Indiana Alcoholic Beverage Commission v. Osco Drug, Inc.*, 431 N.E.2d 823, 833 (Ind. Ct. App. 1982). "In interpreting a statute, our goal is to determine and give effect to the General Assembly's intent. Where the statute is unambiguous, the Court will read words and phrases for their plain and ordinary meaning." *Foundations of East Chicago, Inc. v. City of East Chicago*, 927 N.E.2d 900, 905 (Ind. 2010). See also *Porter Dev., LLC v. First National Bank of Valparaiso*, 866 N.E.2d 775 (Ind. 2007).

"Nothing may be read into [a] statute which is not within the manifest intent of the legislature as gathered from the statute itself. An unambiguous statute must be held to mean what it plainly expresses, and its plain and obvious meaning may not be expanded or restricted." *George P. Todd Funeral Home, Inc. v. Estate of Beckner*, 663 N.E.2d 786, 787 (Ind. Ct. App. 1996) (citation omitted). See also *Sherrell v. Northern Comm. Sch. of Tipton Co.*, 801 N.E.2d 693, 704 (Ind. Ct. App. 2004).

"Statutes relating to the same general subject matter are *in pari materia* and should be construed together so as to produce a harmonious system." *Indiana Alcoholic Beverage Commission v. Osco Drug, Inc.*, 431 N.E.2d 823, 833 (Ind. Ct. App. 1982). "When two statutes on the same subject must be construed together, a court should attempt to give effect to both and *must* attempt to harmonize any inconsistencies or conflicts before applying any other rule of statutory construction." *Moryl v. Ransone, et al.*, 4 N.E.3d 1133, 1137 (Ind. 2014) (emphasis by Court).

CONCLUSIONS

Because the legislature has not provided the Emergency Manager the authority to fill a vacancy on the Board of School Trustees or to appoint any of its officers, the Emergency Manager does not have such authority. The legislature is presumed aware that, by enacting Ind. Code § 6-1.1-20.3 *et seq.* but not amending or repealing any other law with respect to the Board of School Trustees filling its own vacancies and electing its own officers, the legislature intended this result. Because there is no legislative intent to do otherwise, the Board retains its authority to fill vacancies and elect its officers. This would be the plain reading of the statutory provisions affecting both the Board and the Emergency Manager, and would also achieve a harmonious system until or unless the legislature determines otherwise.

SUBMITTED, and
ENDORSED FOR PUBLICATION:

Curtis T. Hill, Jr.
Attorney General

Scott C. Newman, Chief Counsel
Kevin C. McDowell, Assistant Chief Counsel

¹ The other specialists include a Chief Financial Officer and a Chief Academic Officer.

² See <http://www.garycsc.k12.in.us/administration/board-of-trustees/> (last visited March 15, 2018). Although Ind. Code § 20-23-4-26(d)(3) indicates a "treasurer" is also an officer of the governing body, the Board in this case is organized under Ind. Code § 20-26-4-1(b) for this purpose, which does not require a treasurer to be elected as an officer of the governing body. This will be addressed in more detail *infra*.

³ See **Policy 106–Board Organizational Meeting** at p. 19, <https://www.garycsc.k12.in.us/wp-content/uploads/2018/02/GCSC-Policy-Manual-.pdf> (last visited March 15, 2018). The Policy states unequivocally that "[t]he governing body shall organize by electing a president, a vice-president and a secretary."

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